



2010

FS Agreement No. 10-MU-11020000-032  
Cooperator Agreement No. \_\_\_\_\_

**MEMORANDUM OF UNDERSTANDING**  
**Between The**  
**WYOMING DEPARTMENT OF TRANSPORTATION, THE FEDERAL HIGHWAY**  
**ADMINISTRATION**  
**And The**  
**USDA, FOREST SERVICE**  
**ROCKY MOUNTAIN AND INTERMOUNTAIN REGIONS**

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the Wyoming Department of Transportation, the Federal Highway Administration, Wyoming Division, hereinafter referred to as "WYDOT and FHWA," and the USDA, Forest Service, Rocky Mountain and Intermountain Regions, hereinafter referred to as the "U.S. Forest Service."

Background: This MOU supersedes and replaces the MOU of May 2005 (USFS R2# 05-MU-11020000-060 and USFS R4# 05-MU-11046000-105) between the WYDOT, the FHWA and the USFS. This MOU does not supersede or replace the requirements of any national agreements, easements or permits between the affected parties.

Title: Memorandum of Understanding for Wyoming Department of Transportation Facilities on National Forest System Lands

- I. **PURPOSE:** This Memorandum of Understanding (MOU) outlines the roles and responsibilities of the WYDOT, the FHWA, and the U.S. Forest Service – during the development of transportation projects. It contains procedural guidance specific to project Planning & Design, Environmental Processing, Federal Land Appropriation, Construction, and Operation & Maintenance of transportation facilities on National Forest System (NFS) lands. Direction is also included concerning the Use and Disposition of NFS Resources, Signing, Third Party Occupancy and Access Control.
- II. **STATEMENT OF MUTUAL BENEFIT AND INTERESTS:**  
For the FHWA and WYDOT, effectiveness is manifested by transportation projects that are planned, designed, constructed and maintained with appropriate engineering standards and safety considerations, in a timely and cost efficient manner.

For the USFS, effectiveness is measured by transportation projects that are planned, designed, constructed and maintained with appropriate consideration of forest management objectives and with emphasis on conservation and enhancement of forest lands and resources.

This MOU seeks to enhance interagency coordination, cooperation and the mutual understanding of transportation projects on NFS lands and resources. It documents mutual



agreement regarding specific "Implementing Procedures" to be followed as a means to achieve these purposes (See **Implementing Procedures** attached).

In consideration of the above premises, the parties agree to the following **Roles and Responsibilities**:

**III. FHWA SHALL:**

- A. Administer federal-aid highway funding and be the lead agency for implementing the National Environmental Policy Act of 1969 (NEPA) as it relates to federal-aid transportation projects (40 CFR 1500-1508, Title 23 U.S.C.). Federal-aid highways (Chapter One, Title 23 U.S.C.) include the Interstate System, the National Highway System, and selected state, city and county routes. The National Highway System consists of all Interstate and most State arterial highway routes.
- B. Be the lead agency for the development of projects on Forest Highways (Chapter 2, Title 23 U.S.C.) through the FHWA-Federal Lands Division.. In the event WYDOT, under agreement with FHWA – Central or Western Federal Lands, leads the development of a project on a Forest Highway, such work would be pursuant to the procedures outlined in this MOU.
- C. Facilitate the acquisition (through the Federal Land Appropriation process) of highway easement deeds for the use of NFS land for transportation purposes.

**IV. WYDOT SHALL:**

Be responsible for the planning, location, design, construction, operation and maintenance, and perpetuation of a safe and efficient transportation system needed for the benefit of the public in accordance with Title 23, U.S.C., while protecting the environment. WYDOT is the primary agency responsible for implementation and administration of this MOU.

**V. THE U.S. FOREST SERVICE SHALL:**

Be a Cooperating Agency for Federal-Aid highway projects. It is responsible for the protection and multiple use management of NFS lands and resources for the benefit of the people of the United States. This responsibility extends to the development of a public lands transportation system both within and providing direct access to the Forest.

**VI. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:**

- A. The Wyoming State Highway System and Forest Transportation System (including the Forest Highway System) are interdependent and of mutual benefit to the public. WYDOT and FHWA need consent and will coordinate with the USFS on issues such as easements, waste areas, staging areas, material sources and maintenance sites for highway operations and construction projects within or providing direct access to NFS lands. The USFS, when developing improvements or approving other uses that may

impact a WYDOT right-of-way, will consult with WYDOT and seek approval or concurrence.

Actions defined in this MOU will be coordinated between personnel at equivalent organizational levels within each agency. Forest Supervisors and WYDOT District Engineers, as well as USFS District Rangers and WYDOT Resident Engineers or Maintenance Foreman, are encouraged to confer and reach agreement on all matters within their scope of responsibility. Unresolved problems and items requiring approval of higher authority will be referred to the appropriate WYDOT Executive staff and/or Regional Forester level.

B. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this instrument.

WYDOT	FHWA
Name: Timothy Stark Position: Environmental Services Engineer Address: 5300 Bishop Boulevard City, State, Zip: Cheyenne, WY 82009 Telephone: (307) 777-4379	Name: Randy Strang Position: Environmental Program Engineer Address: 2617 East Lincolnway, Suite D City, State, Zip: Cheyenne, WY 82001 Telephone: (307) 772-2004, ext 146

U.S. Forest Service	FHWA
Name: Richard Clark Position: Statewide Liaison Address: Herschler Building, 3 West City, State, Zip: Cheyenne, WY 82002 Telephone: (307) 777-3697	Name: Norman Snead Position: ROW Program Manager Address: 2617 East Lincolnway, Suite D City, State, Zip: Cheyenne, WY 82001 Telephone: (307) 772-2004, ext 145

C. NON-LIABILITY. The U.S. Forest Service does not assume liability for any third party claims for damages arising out of this MOU.

D. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or FHWA or WYDOT is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the MOU.

To FHWA or WYDOT, at FHWA or WYDOT's address shown in the MOU or such other address designated within the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

- E. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the U.S. Forest Service or FHWA or WYDOT from participating in similar activities with other public or private agencies, organizations, and individuals.
- F. ENDORSEMENT. Any of FHWA or WYDOT's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of FHWA or WYDOT's products or activities.
- G. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purposes(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer funds. Specific projects or activities that involve the transfer of funds, services, or property among the parties require execution of separate agreements and are contingent upon the availability of appropriated funds. These activities must be independently authorized by statute. This MOU does not provide that authority. Negotiation, execution, and administration of these agreements must comply with all applicable law. Each party operates under its own laws, regulations, and policies, subject to the availability of appropriated funds. Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.
- H. USE OF U.S. FOREST SERVICE INSIGNIA. In order for FHWA or WYDOT to use the U.S. Forest Service Insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications prior to use of the insignia.
- I. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no United States member of, or United States delegate to, Congress shall be admitted to any share or part of this MOU, or benefits that may arise therefrom, either directly or indirectly.
- J. FREEDOM OF INFORMATION ACT (FOIA). Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).
- K. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- L. DEBARMENT AND SUSPENSION. The FHWA or WYDOT shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should FHWA or WYDOT or

any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

- M. MODIFICATIONS. Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.
- N. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through June 1, 2015 at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.
- O. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.

**WYOMING DEPARTMENT OF TRANSPORTATION**

*B. Patrick Collins*  
 \_\_\_\_\_  
 JOHN COX, Director  
 For Wyoming Department of Transportation

*5/12/10*  
 \_\_\_\_\_  
 Date

Approved as to Form and Execution:

By: *Douglas Moench*  
 \_\_\_\_\_  
 DOUG MOENCH, Senior Assistant  
 Attorney General, State of Wyoming

*5/10/2010*  
 \_\_\_\_\_  
 Date

**FEDERAL HIGHWAY ADMINISTRATION**

*[Signature]*  
 \_\_\_\_\_  
 JOE DAILEY, Wyoming Division Administrator

*6/1/2010*  
 \_\_\_\_\_  
 Date

USDA, FOREST SERVICE

*Rick Cables*  
\_\_\_\_\_  
RICK CABLES, Regional Forester  
U.S. Forest Service, Rocky Mountain Region

*mkk*  
~~6/17~~/2010  
\_\_\_\_\_  
Date

*Harv Forsgren*  
\_\_\_\_\_  
HARV FORSGREN, Regional Forester  
U.S. Forest Service, Intermountain Region

4/14/10  
\_\_\_\_\_  
Date

The authority and format of this instrument have been reviewed and approved for signature.

*Luann Waida*  
\_\_\_\_\_  
LUANN WAIDA, Grants & Agreements Specialist  
U.S. Forest Service, Rocky Mountain Region

6/7/10  
\_\_\_\_\_  
Date

*Doris Mackay*  
\_\_\_\_\_  
DORIS MACKAY, Grants & Agreement Specialist  
U.S. Forest Service, Intermountain Region

6/14/2010  
\_\_\_\_\_  
Date

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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**ACRONYMS AND DEFINITIONS USED IN THIS DOCUMENT**

CEQ - Council on Environmental Quality  
CE - Categorical Exclusion  
CFR - Code of Federal Regulations  
CLOC - Corridor Letter of Consent  
DEIS - Draft Environmental Impact Statement  
EA - Environmental Assessment  
EIS - Environmental Impact Statement  
FEIS - Final Environmental Impact Statement  
FHWA - Federal Highway Administration  
FLRMP - Forest Land & Resource Management Plan  
FONSI - Finding of No Significant Impact  
4(f) - Section 4(f) of the 1966 Department of Transportation Act  
GIS - Geographic Information System  
ID Team - Interdisciplinary Team  
ITS - Intelligent Transportation System  
LOC - Letter of Consent  
LOGO - Referring to signs with company logos/emblems on them  
MERCHANTABLE TIMBER - Trees with a diameter of 7" or greater at breast height  
MOU - Memorandum of Understanding  
MUTCD - Manual on Uniform Traffic Control Devices  
NEPA - National Environmental Policy Act  
NFS - National Forest System  
NOI - Notice of Intent  
PDEIS - Pre-Draft Environmental Impact Statement  
PLH - Public Lands Highway  
ROD - Record of Decision  
STIP - State Transportation Improvement Program  
TODS - Tourist Oriented Directional Signs  
U.S.C. - United States Code  
USFS - USDA - Forest Service  
WYDOT - Wyoming Department of Transportation

**IMPLEMENTING PROCEDURES  
FOR WYOMING DEPARTMENT OF TRANSPORTATION  
ROADWAY PROJECTS INVOLVING NATIONAL FOREST SYSTEM LANDS**

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## IMPLEMENTING PROCEDURES

### I. PLANNING

#### *Purpose*

This section provides the opportunity for early, planning level type coordination among all agencies to ensure each agency's interests are addressed, to share information and to coordinate projects, plans and objectives.

#### *Procedural Steps*

##### A. WYDOT Planning and Districts will:

1. Provide the Regional Foresters with a functional classification map showing the State Highway System in Wyoming.
2. Respond to the USFS requests for comments on the Forest Land & Resource Management Plans (FLRMP), as the forest plans are revised. (Articulate to the USFS the highway needs during revision of a FLRMP).
3. Annually provide the Regional Foresters, Forest Supervisors, and District Rangers with copies of the current State Transportation Improvement Program (STIP) and request identification of any issues within the Forests concerning highways.
4. Solicit USFS input to the Statewide Long-Range Transportation Plan and State Transportation Improvement Program (STIP) development processes.
5. Provide the USFS with a schedule of long-range planning activities that require USFS coordination.

##### B. USFS Forest Supervisors will:

1. Provide WYDOT with copies of individual FLRMPs, Travel Management Plans and long-range road plans that indicate existing and planned land uses.
2. Provide timely information to WYDOT regarding any changes that may affect WYDOT's transportation system. Solicit WYDOT input to FLRMP revisions.
3. Include WYDOT District offices on their mailing list for notification of proposed actions, relevant NEPA documents, forest plan revisions and plan amendments, and transportation plan-related documents.
4. Incorporate WYDOT highway project development and coordination needs into annual Programs of Work.
5. Notify WYDOT Right-of-Way of any proposed land ownership adjustment or land exchanges affecting WYDOT facilities or right-of-way. Upon such notification, WYDOT Right-of-Way will determine the necessity of applying for an easement deed to protect its interest prior to the completion of the land exchange.
6. GIS data will be shared between signatories of the MOU at no cost when such data is available.

## II. EARLY PROJECT DEVELOPMENT

### *Purpose*

This section outlines a process to build agency support for the project. This is accomplished by identification of known information, issues and concerns, participation in early field reviews, resolution of issues and preparation for public involvement. In addition, these steps provide input into the development of the project Purpose and Need statement and the determination of the type of environmental document.

Depending on the scope and extent of the proposed activities, projects which qualify as a Categorical Exclusion (CE) may be processed in a streamlined fashion eliminating steps that are normally conducted on larger more complex projects.

### *Procedural Steps*

#### A. Initial Project Coordination.

1. WYDOT Environmental Services will:  
Write a letter notifying the Forest Supervisor of the highway development project and initially explaining the purpose and need. It will request that the Forest designate a Project Coordinator.
2. USFS Forest Supervisor will: Designate a Project Coordinator within 30 days.

#### B. Reconnaissance Inspection Phase

1. WYDOT Project Development will:
  - a. Schedule a field reconnaissance inspection to review project and environmental features and concerns.
  - b. Invite the USFS Project Coordinator and other forest staff to attend the reconnaissance inspection.
  - c. Prepare a reconnaissance report and provide a copy to the USFS Project Coordinator. This report will provide the initial design information as well as a first statement of the need for the project.
2. USFS Project Coordinator and other appropriate forest personnel will:
  - a. Participate in the reconnaissance inspection and provide comments to WYDOT Project Development on the report.
  - b. Identify the FLRMP direction that would need to be incorporated into the WYDOT highway development project's planning and design criteria.
  - c. Provide WYDOT Environmental Services with existing information relative to the project. USFS Project Coordinator should advise WYDOT Environmental Services on the USFS issues and concerns as dictated by the project scope and extent. These may include:
    - 1) Potential inconsistencies with land management plans,
    - 2) Anticipated social, economic and environmental impacts,
    - 3) Travel demand estimates for the NFS/Public Lands roads,
    - 4) Potential recreation sites and activities, physical and permitted,
    - 5) Endangered, threatened, proposed and sensitive species inventories,

- biological evaluations and biological assessment requirements,
- 6) Existing and potentially needed wildlife crossings or fish passage,
  - 7) Potential cultural properties and other recreational resources that will be protected under Section 4(f) (recreation facilities covered under 23 U.S.C. 138, 49 U.S.C. 303),
  - 8) Public lands survey monuments, locations and protection,
  - 9) Potential staging, stockpile or storage areas,
  - 10) Timber clearing, means of removal and appraisal,
  - 11) Material sources, disposal sites and borrow pits,
  - 12) Public involvement needs,
  - 13) Identify facilities essential to management of NFS lands (cattle guards, stock passes, fences, approaches, signs, etc.) that need to be incorporated into the WYDOT project design.
  - 14) Other issues of special concern.

C. Project Purpose and Need Development and Early Environmental Analysis.

1. WYDOT Planning and Environmental Services will:

- a. Coordinate with the USFS to refine the Purpose and Need statement such that, it is responsive to project issues, concerns and objectives, discussing in detail: (1) the location of any proposed action; (2) the length of any proposed action; (3) the termini of any proposed action; (4) any proposed improvements; and (5) the transportation and other needs which a proposed action is intended to satisfy.
- b. Request USFS assistance in identifying those national forest resources and concerns that need to be considered in subsequent project environmental studies and analyses. Finalize a listing of major project objectives developed during early stages of project scoping and alternatives to address these issues. Only those issues found to be key should be carried forward with in-depth analysis. The environmental issues should include, but not be limited to the following when evaluating purpose and need in early environmental coordination:
  - 1) Adverse effects to local traffic patterns, property access or community cohesiveness,
  - 2) Recreation impacts,
  - 3) Air and water quality,
  - 4) Noise impacts,
  - 5) Geologic and landform impacts, e.g. known or existing landslides,
  - 6) Wetlands,
  - 7) Endangered, threatened, candidate species, Forest Service-identified sensitive species and related critical habitat,
  - 8) Land use consistency with Forest Plan,
  - 9) Historic, recreational and refuge areas as protected by Section 4(f) of the 1966 Department of Transportation Act, as amended, and 23 CFR 771.35.,

- 10) Historic and archeological sites as protected by Section 106 of the National Historic Preservation Act,
  - 11) Hazardous contamination and waste sites,
  - 12) Underground storage tanks,
  - 13) Prime and unique farmland,
  - 14) Visual impacts,
  - 15) Wild and Scenic rivers,
  - 16) Wilderness areas,
  - 17) Effects on fish and wildlife,
  - 18) Location of mineral material borrow pits,
  - 19) Disposal sites for surplus material,
  - 20) Potential staging, stockpiling, processing sites,
  - 21) Floodplains,
  - 22) Temporary construction impacts,
  - 23) Social and economic impacts,
  - 24) Cumulative impacts,
  - 25) Climate Change.
- c. Examine a range of reasonable alternatives consistent with project objectives, project purpose and need, and key issues. These will be evaluated for feasibility, effectiveness for satisfying recognized needs, and sensitivities to the environment. Based on the results of the analysis and input from agencies and the public, these alternatives will be limited to those alternatives determined to meet project objectives, funding limits, purpose and need and with potential to avoid and/or minimize environmental impacts. The analyses will also provide a "no action" alternative (existing condition) to be used as a basis for evaluating other alternatives. Each alternative determined to meet the purpose and need will undergo rigorous evaluation with full consideration of public and agency comments and concerns. Alternatives and assessment of their impact will be presented in the environmental document.
- d. Utilize relevant resource databases and baseline information when available. In their absence, WYDOT will cooperate and coordinate with the USFS to collect the required data or perform identified studies. If mutually agreeable and beneficial, WYDOT may enter into a collection agreement with the USFS for expenditures to collect the required information. Should the USFS lack resources to accomplish the work, WYDOT Environmental Services, in consultation with the USFS, may perform the work or contract for the work to be performed by other sources.
2. The USFS, FHWA and WYDOT will:  
Designate agency members to be representatives on the project Interdisciplinary Team who will coordinate on project objectives, project purpose and need, needed environmental analysis, key issues to be carried forward, the different alternatives to be evaluated, any memorandum of agreements for corridor letters of consent and the type of environmental document.
3. When one or more roadway construction projects can reasonably be considered an

integrated part of a larger comprehensive roadway construction undertaking, WYDOT Right-of-Way may elect to request (through the FHWA) a Corridor Letter of Consent (CLOC). Approval of the CLOC would be considered conceptual approval of the project alignment route, subject to joint project planning, design and stipulations. WYDOT Environmental Services may request a memorandum of agreement with the USFS – Forest Supervisor to determine processes and objectives in the early stages of the environmental analysis and prior to any decision regarding the type of environmental document. The CLOC would include all separate construction projects considered part of the larger comprehensive roadway construction undertaking.

**D. Field Survey (WYDOT Reconnaissance & Survey Plan Phase)**

1. WYDOT Environmental Services and Project Development will:
  - a. Prepare a summary of project issues identified during scoping.
  - b. Prepare a preliminary listing of major project objectives and other identified issues to be incorporated in the project purpose and need. Show tie between purpose and need, issues and identified alternatives.
  - c. Invite USFS Project Coordinator to attend upcoming project reviews.
  - d. Provide copies of the summary of project issues and request land survey information on corner locations, property line boundaries, maps and access routes necessary to conduct environmental evaluations.
  - e. Apply for permits to survey, including land surveying, topographic mapping (including topographic mapping needs to be completed prior to preliminary plans), material investigation and boring (includes any subsurface investigation on NFS lands, i.e., landslides, foundations, borrow, aggregate, etc.).
2. USFS District Ranger will:
  - a. Issue permits for placement of survey markers and material source, landslide investigations and boring.
  - b. Furnish available survey and access information, including land corner locations, maps and access routes necessary to conduct environmental evaluations.
  - c. Establish requirements and limitations related to clearing practices for survey lines, material source investigations and borings.
  - d. Review and discuss with WYDOT issues identified during scoping of the project.

**E. Early Public Involvement**

1. WYDOT Environmental Services will:
  - a. Prepare a scoping document for public input. (Note: A summary of all major issues developed and how they were resolved should be made available at all future meetings and plan reviews).
  - b. Provide the public an opportunity to participate in a public scoping meeting.
  - c. Ensure that USFS mailing list of interested parties is merged and included

- with WYDOT mailing lists for all public correspondence related to project.
2. USFS Project Coordinator will:
    - a. Coordinate with WYDOT regarding the kind(s) and amounts of scoping that are done during all phases of public involvement for the project.
    - b. Participate in public scoping meeting and efforts and provide information to the public regarding USFS concerns and management of the affected lands.
  3. The USFS, WYDOT and FHWA project coordinators will also identify future decisions that are required by their agency in order for the project to move forward and whether additional analysis is necessary for these decisions.

### III. ENVIRONMENTAL DOCUMENT PROCESSING

#### *Purpose*

The purpose of this section is to outline the coordinated process used to develop the environmental analyses and documentation required by the National Environmental Policy Act (NEPA).

The FHWA is responsible for compliance with the National Environmental Policy Act (NEPA). The FHWA, WYDOT and USFS members of the Interdisciplinary Team will coordinate on the level of appropriate environmental analysis under FHWA guidelines.

#### A. Agency Decisions

1. FHWA and WYDOT are responsible for determining Purpose and Need, project design, construction methods, NEPA compliance for material sites and whether to build the project. FHWA is also responsible for a determination of public interest.
2. FHWA is responsible for determining the level of environmental documentation required and will coordinate with WYDOT and the Forest Service.
3. USFS is responsible for a land appropriation whenever issuing a Letter of Consent. This includes a statement of consistency with the Forest Plan and those stipulations necessary for the protection and utilization of NFS lands.

#### B. Roles and Responsibilities:

##### FHWA:

1. The FHWA is the lead agency (40 CFR 1501.5) for Federal-Aid Highway projects. As the lead agency, FHWA is responsible for ensuring compliance with NEPA and for providing guidance and direction to the WYDOT in the preparation of NEPA documents. FHWA ensures regulatory requirements and clearances are met during the planning and design phase for all agencies affected by the transportation project.
2. WYDOT:  
WYDOT is responsible for the preparation of the NEPA documentation for all aspects of the project under the guidance of FHWA and for requesting any specific assistance or necessary expertise. It is also responsible for maintaining the formal record file for environmental documentation.

3. USFS:

The USFS role is that of a Cooperating Agency (40 CFR 508.5) for Federal-Aid Highway projects involving or affecting NFS lands. The USFS is responsible for providing recommendations or stipulations to eliminate/mitigate adverse project effects on NFS lands/resources, and if necessary, a Forest Plan amendment. The USFS will issue decisions (based on the FHWA NEPA) to authorize Special Use Permits for any project uses located outside the highway right-of-way or designated corridor (i.e., wetland mitigation sites, material sources, stockpiling sites, etc.) and for Mineral Contracts/Permits for mineral material sites.

C. Environmental Coordination:

WYDOT, FHWA and USFS will coordinate: 1) the development of a single set of environmental documents for a proposed roadway project; 2) the FHWA appropriation and transfer of land for highway purposes; and 3) complete any required notice and comment process.

D. Level of Documentation

The three levels of NEPA documentation are the Categorical Exclusion (CE), the Environmental Assessment (EA) and the Environmental Impact Statement (EIS). Section 4(f) of the 1966 Department of Transportation Act is also covered because it affects the processing of environmental documents for transportation projects under Title 23 U.S.C.

Definition of Document Types:

1. Categorical Exclusion (CE) refers to a document developed by WYDOT Environmental Services for FHWA using NEPA when a highway project or activity will not lead to significant environmental impacts. These types of projects are defined in 23 CFR 771.117(c) - no document required, and 23 CFR 771.117(d) - documentation level determined by FHWA Division Office. Typical non-construction projects which would be processed under a CE include activities such as: planning, grants, training and research programs. Construction projects processed under a CE document would be resurfacing, restoration, rehabilitation, certain reconstruction (activities not leading to significant environmental impacts), safety devices and bridge repair or replacement. It may also be appropriate to prepare a NEPA document for a maintenance project depending on the scope and extent of the work.
2. Environmental Assessment (EA) refers to a document developed by WYDOT Environmental Services for FHWA using FHWA NEPA guidelines when there is potential for significant impacts. The EA documents analyses that are carried out to determine if the proposed action will have significant environmental impacts. If the action will have no significant environmental impacts, a Finding of No Significant Impact (FONSI) will be prepared. Otherwise an Environmental Impact Statement will be prepared.
3. Environmental Impact Statements (EIS) are written when the proposed action will have a significant impact. The EIS will be developed by WYDOT Environmental

Services for FHWA using FHWA NEPA guidelines. The EIS will contain sufficient data for the USFS to issue a letter of consent or a corridor letter of consent.

4. Section 4(f) of the 1966 DOT Act, as amended, and 23 CFR 774, applies to publicly owned parks, recreation areas, wildlife/waterfowl refuges, campgrounds, and some cultural sites. It is a separate environmental process that determines if there are significant impacts to 4(f) resources. A roadway that would be constructed on NFS lands does not necessarily require a Section 4(f) evaluation. Section 4(f) evaluations apply only to designated sites on NFS lands (developed recreation areas, campgrounds, historic sites or other facilities), that are affected by the transportation project. Each class of environmental documentation will present project impacts to sites determined as protected under section 4(f).

E. Procedural Steps for Environmental Documentation:

1. Categorical Exclusions:

- a. WYDOT Environmental Services will send a copy of the project report (field review, project objectives, project purpose and need) to USFS Project Coordinator and the FHWA for their review and comment.
- b. USFS Project Coordinator and FHWA will review and provide comments on project reports provided by WYDOT Environmental Services.
- c. WYDOT Environmental Services will coordinate development of the CE with the FHWA and USFS Project Coordinator.
- d. FHWA will assist as necessary in the development of the CE.
- e. USFS will be provided opportunity to review draft CE. After USFS comments are addressed, the CE will be provided to the FHWA for concurrence/record.
- f. FHWA will concur with the CE and 4(f) evaluation or return them to WYDOT Environmental Services for revisions. Coordination with the USFS may be required.
- g. After the FHWA concurs with the CE and 4(f) evaluation, WYDOT Environmental Services will distribute the CE and the Section 4(f) evaluation.

2. Environmental Assessment/Finding of No Significant Impact:

- a. WYDOT Environmental Services will schedule and hold a public scoping meeting(s) for the proposed project and invite the USFS Project Coordinator and FHWA to participate in the public scoping meeting.
- b. USFS and FHWA will participate in WYDOT's public scoping meeting.
- c. WYDOT Environmental Services will develop and provide copies of the project reports (scoping summaries, project objectives, purpose and need, field reviews) to the USFS Project Coordinator and FHWA for their review and comments.
- d. USFS Project Coordinator and the FHWA will provide WYDOT Environmental Services with input and comments on the project reports within 30 days.
- e. WYDOT Environmental Services will initiate preparation of the EA and draft

- 4(f) evaluation and coordinate the project with the USFS Project Coordinator and FHWA.
- f. FHWA, as the Lead Federal Agency, will coordinate with Federal resource and land management agencies, as needed, during preparation of the EA and 4(f) evaluation.
  - g. WYDOT Environmental Services will develop a review copy EA and provide the review copy of the EA to the USFS Project Coordinator for comments.
  - h. USFS Project Coordinator will provide written comments on the review copy of the EA to WYDOT Environmental Services within 30 days; USFS will make a preliminary determination as to whether project is consistent with the Forest Land & Resource Management Plan (FLRMP).
  - i. After USFS comments are addressed in the EA, WYDOT Environmental Services will forward the EA and 4(f) evaluation to the FHWA for review and concurrence. The Lead Agency is responsible for determining when comments have been addressed.
  - j. FHWA will concur with the EA or return it to WYDOT Environmental Services for revisions. Coordination with the USFS may be required.
  - k. After concurrence from FHWA, WYDOT Environmental Services will make the EA and 4(f) evaluation available to the public, to the USFS and to the USFS mailing list. The EA and 4(f) evaluation will be made available for written comments addressed to WYDOT Environmental Services.
  - l. If FHWA determines that a public meeting is required, a public meeting will be conducted by WYDOT Environmental Services. The public meeting will be conducted in accordance with the 40 CFR guidelines and public/agency comments will be received.
  - m. FHWA and USFS will attend the public meeting.
  - n. The USFS will provide written comments on the EA and 4(f) evaluation, if needed. USFS comments will include a statement regarding the consistency of the project with the FLRMP.
  - o. WYDOT Environmental Services will evaluate all public input and comments, with assistance from the USFS and FHWA. A review copy of the FONSI will be prepared and provided for USFS and FHWA review, or if a significant environmental impact is determined, the EIS process will be initiated.
  - p. When the FHWA concurs with the FONSI, WYDOT Environmental Services will forward the FONSI to the USFS Project Coordinator. If FHWA does not concur with the FONSI, then FHWA must give a written determination to proceed with an EIS.
  - q. WYDOT Environmental Services will announce the availability of the FHWA FONSI and distribute copies to the various agencies and to the public.
3. Environmental Impact Statement/Record of Decision:
- a. WYDOT's Environmental Services will prepare a Notice of Intent (NOI) for the development of an EIS and forward to FHWA

- b. FHWA will publish the NOI in the Federal Register. The NOI will establish a public scoping process.
- c. FHWA will formally request the participation of the USFS and other Federal agencies as Cooperating Agencies. This request will include copies of any project reports available and a copy of the NOI.
- d. USFS will provide written acceptance of Cooperating Agency status and designate a Project Coordinator, if not already identified.
- e. WYDOT will initiate the public scoping process with public and agency scoping meetings. FHWA will participate in these meetings.
- f. USFS Project Coordinator will identify Agency issues related to the proposed action, provide these issues to WYDOT Environmental Services and participate in scoping meetings.
- g. WYDOT will develop a project scoping report and provide copies to the USFS Project Coordinator and FHWA.
- h. FHWA and WYDOT will meet with the USFS and other Cooperating Agencies, as needed, to further develop and refine significant issues and the extent of project-related analyses of issues or environmental resources.
- i. WYDOT Environmental Services will establish an Interdisciplinary Team (ID TEAM) and hold ID Team meetings. The USFS Project Coordinator or other designated USFS employee will represent the forest on this Team.
- j. FHWA will participate in the Interdisciplinary Team meetings.
- k. WYDOT Environmental Services, with input from the ID Team, will prepare preliminary drafts of the EIS (PEIS) and draft 4(f), when needed, and provide the PDEIS and draft 4(f) to the FHWA for review.
- l. FHWA and WYDOT, when satisfied that the PDEIS and draft 4(f) evaluation complies with the NEPA/4(f) requirements, will provide a copy of the PDEIS and 4(f) evaluation to the USFS for early comment and a preliminary determination as to whether the proposed action is consistent with the FLRMP.
- m. USFS will provide comments on the PDEIS within 30 days; WYDOT and
- n. FHWA will coordinate with the USFS to resolve their preliminary comments. WYDOT Environmental Services will prepare the Draft EIS and Draft 4(f) Evaluation, sign the document and provide to FHWA for signature.
- o. FHWA will approve the DEIS for public distribution and initiate the public availability period by notice in the Federal Register.
- p. WYDOT Environmental Services will distribute the DEIS and place a notice in the appropriate newspapers and other information sources, stating the availability of the DEIS for public comment. At the same time, if FHWA determines that a public hearing is required, WYDOT Environmental Services will advertise a public hearing. WYDOT will follow 40 CFR 1506.6 procedures if a public hearing is conducted. A minimum of 45 days, established by the Federal Register notice, will be allow for the public and agency comment period.
- q. USFS and FHWA will participate in the hearing process.

- r. A preliminary Final EIS (FEIS) will be prepared by WYDOT Environmental Services after review and consideration of agency and public comments. FHWA will assist in the preparation of the preliminary EIS.
- s. A copy of the preliminary FEIS will be provided to the USFS for review and comment.
- t. WYDOT and FHWA will coordinate with the USFS to resolve any comments and secure a final determination by the USFS that the proposed action is consistent with the FLRMP.
- u. The FEIS, signed by the WYDOT Director, will be provided for the FHWA approval/signature.
- v. After the FHWA approval of the FEIS, WYDOT Environmental Services will provide a copy of the FEIS to any persons, organizations, or agencies that made substantive comment on the Draft EIS.
- w. FHWA will assure notice of the FEIS is published in the Federal Register for the final commenting period.
- x. FHWA will prepare a Record of Decision (ROD). (When necessary, the USFS may prepare a Record of Decision for actions not covered by the FHWA NEPA document).
- y. FHWA completes the environmental process by signing the ROD.
- z. WYDOT Environmental Services will provide the FHWA ROD to the USFS Project Coordinator and Forest Supervisor, announce the availability of the FHWA ROD and distribute copies to agencies and the public.

#### **IV. PROJECT IMPLEMENTATION AND MONITORING:**

Commitments for mitigation and monitoring included in CEs, EAs, EISs, FONSI and Records of Decision must be adhered to unless the associated impact is reduced, eliminated or increased. In those cases the mitigation commitments will be adjusted accordingly.

#### **V. PROJECT DESIGN (Preliminary Plans, Grading Plans, Right-of-Way and Engineering Inspection Plans, Right-of-Way and Utility Plans and Final Plans)**

##### *Purpose*

The purpose of this section is to outline the coordinated process used by WYDOT Project Development as a project progresses from preliminary to final design.

For information purposes it is estimated:

1. Preliminary Plans represent approximately 10% design,
2. Grading Plans represent 60% design,
3. Right-of-Way and Engineering Plans represent 80% design,
4. Right-of-Way and Utility Plans represent 90% design, and

5. Final Plans represent 100% design completion.

*Procedural Steps*

- A. Features of construction/reconstruction projects that may have an effect on the protection and utilization of the land traversed by the right-of-way and adjoining land under the administration of USFS will be mutually agreed upon by the USFS, FHWA and WYDOT by conference or other communication during the preparation of the plans and specifications for each project.
- B. During each of the five project development plan phases, WYDOT Project Development will provide the USFS District Ranger with two sets of plans and the Project Coordinator with one set of plans. WYDOT will invite the USFS to attend each of the scheduled WYDOT plan reviews/field inspections.
- C. USFS will participate in each of the project plan reviews and field inspections. At that time, USFS will submit project specific comments and recommendations to WYDOT Project Development.
- D. Recommendations received from the USFS will be included in subsequent plans when feasible. Recommendations should be incorporated into the design plans as much as possible to keep Letter of Consent stipulations to a minimum.
- E. WYDOT Right-of-Way, Project Development, the Resident Engineer and FHWA will review stipulations and return them to the USFS Project Coordinator if revisions are needed. USFS recommendations and/or stipulations need to be agreed upon and finalized by the Final Plan stage.
- F. Prior to construction of a project or an individual segment within a "corridor" project, WYDOT Project Development will prepare a set of Final Plans. The USFS Project Coordinator will be notified of the scheduled WYDOT Final Plan review. The Final Plans provided to the USFS will include the proposed general contract provisions covering work on NFS lands. The general contract provisions will include any appropriate USFS fire plan, clearing plan, erosion control plan or other special provision (e.g., food storage order, grizzly bear considerations).
- G. USFS will participate in the Final Plan review. A set of project or segment-specific recommendations or stipulations will be developed and submitted to WYDOT Project Development by the USFS as appropriate.
- H. WYDOT Project Development will incorporate mutually agreeable recommendations from the field inspection review and final office review in plans and specifications. Differences will be referred to the next appropriate level of each agency, with final authority resting with the signatories of this MOU.

1. Contract specifications resulting from stipulations in the USFS CLOC/LOC cannot be modified without USFS agreement at delegated decision level (district, forest or region).

## VI. USE AND DISPOSITION OF NATIONAL FOREST SYSTEM RESOURCES

### A. Timber

1. The USFS will retain the right to any merchantable timber not specifically appropriated. The WYDOT Resident Engineer will notify the USFS District Ranger and Project Coordinator of timber within the clearing limits scheduled for removal. The USFS District Ranger will determine whether a timber sale to an independent contractor or another authorization for removal is appropriate.
2. USFS and WYDOT will develop a joint project implementation schedule that will include timetables related to merchantable timber and mineral materials removal. Timetables will include dates for completion of items such as clearing limit designation, timber marking and cruising, appraisal and contract preparation.
3. As set forth in the stipulations, any merchantable timber, defined as meeting current utilization standards for saw timber or products other than logs, will be: (1) stockpiled in an area designated by the USFS for disposal by other means; (2) acquired by WYDOT or WYDOT's contractor at fair market value as determined by appraisal; or (3) permitted as a non-sale disposal, if regulations apply, to be disposed of in whatever manner is deemed appropriate by WYDOT, granted the material is removed from NFS land.
4. When the USFS will retain the ownership of the timber cut within the clearing limits, the USFS District Ranger will stipulate the specifications that must be followed for the marking, bucking and decking (cutting and stacking) of the timber.
5. The USFS District Ranger will provide a written appraisal and contract (if required) in accordance with the joint project schedule. It is understood that the objective is for the appraisal to be completed at least 30 days prior to the bid opening. A timber contract (if required) would be completed no later than 30 days after WYDOT awards the construction contract.
6. If merchantable timber is being acquired by WYDOT or WYDOT's contractor, at a fair market value as determined by an appraisal, the holder of the contract will provide direct payment to the USFS for the appraised value of the timber prior to cutting, in accordance with the terms of the contract. The negotiated schedule should reflect the applicable dates for flagging of the cutting limit boundaries, the completion of volume estimates and corresponding appraisal and the issuance of the contract.
7. If timber is stockpiled on National Forest System (NFS) land, the site must be identified by the USFS Project Coordinator and agreed to by the WYDOT Resident Engineer. Any necessary environmental clearances must be obtained.
8. If so allowed and after payment to the USFS, the timber can be given to the public, at no cost, for use as firewood. If this occurs, the wood must be cut to lengths specifically for use as firewood according to USFS requirements prior to removal from the designated NFS land.

**B. Borrow Pits and Mineral Material Sites**

1. USFS Authority for disposal of mineral materials is provided by the Materials Act of July 31, 1947 (30 U.S.C. 601 et seq.), as amended by the Acts of August 31, 1950 (30 U.S.C. 603-604), July 23, 1955 (30 U.S.C. 601, 603) and September 25, 1952 (30 U.S.C. 602), and the following: the Act of June 4, 1897 (16 U.S.C. 602), the Act of March 4, 1917 (16 U.S.C. 520); the Bankhead-Jones Farm Tenant Act of July 22, 1937 (7 U.S.C. 1010); the Act of September 1, 1949 (section 3) (30 U.S.C. 192c); the Act of June 28, 1952 (section 3) (66 Stat. 285); the Act of September 2, 1958 (16 U.S.C. 521a); the Act of June 11, 1960 (74 Stat. 205); and the Federal Highway Act of 1958 (23 U.S.C. 101 et seq.).
  - a) The USFS retains the federal management responsibilities for all mineral materials located on NFS lands, including those located within rights-of-ways or easements across NFS lands.
  - b) The USFS concurs that Free Use – Mineral material generated on NFS lands and used in a public purpose project, such as any public transportation construction project (whether on or off federal lands), is free of charge to FHWA or WYDOT (36 CFR 228.62(d)(1)). Coordination between the USFS District Ranger and WYDOT will be required. A "Free-Use" contract/permit may be required. If required, the "Free-Use" permit may be issued to a designated agent (contractor) of FHWA or WYDOT at the discretion of the authorized officer (36 CFR 228.62(c)).
2. The USFS has established that any excess excavated mineral materials such as landscape rock, topsoil, gravel, fill, or waste material have a marketable value. This excess material, when generated during highway construction activities, will be stockpiled in an area mutually agreed upon by the USFS, FHWA and WYDOT. The site where the material will be stored will be designated in the project specifications. Such mineral materials are the property of the United States [36 CFR 228.43(d)] and the sale or disposal of this material will follow the procedures outlined below. The USFS retains the federal management responsibilities for all excess excavated mineral materials located within rights-of-ways or easements across NFS lands. The negotiated project schedule, specified in Section VI. A. 2., must reflect all issues and decisions regarding the disposal or use of excess excavated mineral resources.
3. The USFS, WYDOT and FHWA will cooperate during development of the project environmental document to identify disposal sites and resolve other issues associated with the storage of excess excavated mineral materials, identify any mitigation necessary to use the sites and complete the needed environmental clearances for use of the sites during project construction.
4. WYDOT, during all stages of project plan development, will assure that the USFS Project Coordinator is notified of all plan inspections, identify the quantity of excess excavated materials, identify designated or available disposal sites and request USFS authorization, as needed.
5. At the Final Plan inspection a Special Provision should be developed for inclusion in construction contracts as needed, to advise the contractor and WYDOT when a

Mineral Material sale contract with associated fees will be required by the USFS District Ranger for any excess excavation material removed from NFS lands and disposed to any private individual or group (non-public agency) or for any private use (non-public use). The USFS will work with WYDOT to develop appropriate specification language for their contracts.

6. Sale of Mineral Material – A USFS Mineral Material contract is required whenever mineral material is removed from a borrow or pit source, or when excess excavated material is removed from the construction site. A Mineral Material contract may be issued to WYDOT or its contractor. The contract allows excavation, crushing, screening, stockpiling and removal of mineral materials from a borrow or pit source. Further material processing on NFS land, such as concrete batch or asphalt hot plants, requires a separate special use authorization from the USFS.
7. If needed, any mineral material sale contract will be issued by the USFS to WYDOT or WYDOT's contractor within 90 days from the date of WYDOT's notification to the USFS.
8. Fair Market Value – The USFS must collect fair market value for mineral materials taken from NFS land. [36 CFR 228.43(b)]
  - a) Fair Market Value may be determined by use of existing USFS value schedule (Forest Service Manual Supplement 2850, Section 2856 and "Mineral Material Commodity Rate Schedule for Forests in Wyoming" memo) or by separate appraisal at the discretion of WYDOT.
  - b) Appraisals conducted by WYDOT or private parties must be reviewed and approved by USFS specialists.
9. On completion of a highway construction project, any remaining mineral materials excavated during the project that are removed from NFS Lands and/or sold for commercial purposes or given to a private entity, other than for public projects, must be purchased by WYDOT or by WYDOT's contractor at fair market value [36 CFR 228.59(b)].
10. Borrow Pit Reclamation – USFS contracts and permits will contain requirements to rehabilitate the used area. WYDOT will hold the contractor responsible for meeting these requirements.

## VII. APPROPRIATION OF FEDERAL LANDS

### *Introduction*

In August 1998, the national *Memorandum of Understanding between USDA-Forest Service and USDOT-FHWA - Regarding the Appropriation and Transfer of National Forest System Lands for Highway Purposes* (MOU) was executed. The MOU provides procedures for the establishment of an authorized DOT easement on Federal-aid highways. The processes described hereinafter follow the guidelines established by the MOU.

The agencies coordinate to establish rights-of-way for transportation purposes for both proposed and existing roads on National Forest System lands (Title 23 U.S.C.). Such right-of-way allows the highway

agencies use of such lands for design, construction and operation of transportation facilities. While these easements and uses are in place the USFS maintains the fee simple ownership of the lands. WYDOT will normally maintain vegetation management out to the clear zone limits and maintenance activities necessary for the transportation facility out to the right-of-way limits. It is recognized that certain USFS activities, such as vegetation control and wildlife management may encompass lands within the transportation right-of-way. Such activities should not interfere with the transportation purposes.

- A. After the alignment and ROW design and NEPA are complete for a highway project, WYDOT Right-of-Way will submit a request for appropriation and transfer of right-of-way to the FHWA ROW Program Manager. The request will be accompanied by the Right-of-Way Plans (alignment, topography and disturbance limits) and the NEPA document.
- B. FHWA ROW Program Manager will evaluate the request for appropriation. If in agreement, a Letter of Consent (LOC) will be requested for the project from the USFS Forest Supervisor (Region 4) or Regional Forester (Region 2). A LOC will be requested for single segment projects. A Corridor Letter of Consent (CLOC) may be requested when multiple contiguous projects (segments) are planned on a "corridor" of roadway.
- C. USFS will review the request for a LOC. If approved, the LOC will be issued within four months to the FHWA. It will cite the appropriation and transfer of the lands under provisions of Section 317 of 23 U.S.C., Sections 107d and 317, also referenced in 23 CFR 710.601. Appropriate USFS Stipulations will be included with the LOC. FHWA will then send a letter with a copy of the approved LOC and Stipulation to WYDOT Right-of-Way for their action. By issuance of the LOC, the USFS authorizes immediate entry on NFS lands subject to the terms set forth in the LOC and the Stipulations.
- D. The USFS, FHWA and WYDOT agree to substitute the following language regarding highway boundary survey and monumentation in the standard USFS LOC Stipulations:
  1. Highway boundary control monuments shall be established at all directional changes along highway right-of-way boundaries to include the following: R/W Jogs, Points of Curvature (PC), Points of Tangent (PT), Tangent to Spiral (TS), Spiral to Curve (SC), Curve to Spiral (CS), Spiral to Tangent (ST) and Angle Points (AP).

Established highway boundary control monuments, unless deemed impractical, shall be in accordance with WYDOT Standard Plan 611-1, Highway Monuments. The use of nonstandard monuments shall require the prior approval of the State Land Surveyor or the District Land Surveyor.

2. Existing property corners, highway boundary control monuments and land corners of the U.S. Public Land Survey System destroyed by construction shall be re-established in accordance with Wyoming Department of Transportation manuals, policies and procedures, and applicable Federal or Wyoming State laws, guidelines

and standards.

Property corner monuments shall be established at points of intersect with abutting property lines and modified post construction right-of-way boundaries. This applies only to those property lines previously monumented at intersects with existing right-of-way boundaries prior to modification.

- E. Upon completion of the construction of a highway project (or any discrete section within a "corridor" project), WYDOT Right-of-Way will prepare draft U.S. DEPARTMENT OF TRANSPORTATION easement deeds, based upon the authorized project right-of-way plans submitted with the LOC. If a CLOC was issued, a set of right-of-way drawings with ROW needs, including the width from centerline, for long term operation and maintenance of the as-built highway and related facilities will be submitted. The FHWA will provide the draft easement deeds to the USFS for review and approval. Following approval, WYDOT, on behalf of the Transportation Commission, will finalize the deeds and forward to FHWA.
- F. FHWA ROW Program Manager will review the easement deeds and, if they meet the requirements of the LOC/CLOC, will execute and return them to WYDOT Right-of-Way for recording.
- G. WYDOT Right-of-Way will provide one (1) copy of the recorded easement to the FHWA ROW Program Manager and to the appropriate USFS office (Forest Supervisor/or Regional Office).
- H. Where WYDOT is the lead agency for the disbursement of federal funds for off-system projects (county roads and bridges), WYDOT Right-of-Way will make application on behalf of the county for a Letter of Consent and easement deed in the name of the county using the process described above.
- I. The appropriate WYDOT District Office will comply with USFS procedures for use or occupancy of NFS lands for other transportation related uses outside of the easement areas (ex: borrow pits, waste areas, and temporary construction sites).
- J. WYDOT Right-of-Way and the FHWA ROW Program Manager will notify the Forest Supervisor, District Ranger and/or Regional Office when the need for the appropriation no longer exists. Upon notification USFS will either 1) accept the road as is, or 2) if a roadway or other improvements are in place and are to be removed, identify rehabilitation standards that WYDOT must complete. Following completion of the rehabilitation and acceptance of same by the USFS, WYDOT Right-of-Way will notify the FHWA ROW Program Manager in writing of the need for relinquishment. FHWA will send a request for termination/relinquishment to the appropriate USFS office. USFS will then send FHWA a letter of acceptance of termination/relinquishment. Upon receipt of the approved notice of relinquishment by FHWA, the appropriated lands will immediately revert to the USFS. A formal relinquishing document will be prepared by WYDOT Right-of-Way and

endorsed by FHWA. Copies of the document will be sent to the appropriate USFS office and FHWA.

- K. The LOC appropriation will terminate if construction is not started within (10) years, unless agreed otherwise.
- L. Conversion of Existing Highways to Easement Deeds (Absent Reconstruction)
  - 1. WYDOT Right-of-Way, FHWA and USFS have agreed to verify the ROW status whenever a highway on NFS lands is involved in a WYDOT STIP project (reconstruction, overlay, widening, etc.). A determination will be made whether a formal ROW authorization (easement deed) is in place. If an authorization is lacking, WYDOT will undertake to acquire a highway easement deed in a timely manner, using the aforementioned LOC process or the process described hereinafter.
  - 2. ROW Widths:

The proposed standard ROW width is 200 feet (100 feet either side from centerline), with allowances for cuts, fills, constructed facilities, waste areas, etc., as mutually identified and agreed upon.
  - 3. Highway Conversion application packages and processing guidelines:

Prior to submitting a formal request to FHWA to convert a highway ROW to easement deed, the WYDOT Resident Engineer and USFS District Ranger (or their designated representatives) will recon the section of highway affected by in the conversion request. They will determine whether a 100 foot from centerline ROW width is sufficient. When the standard width is insufficient for operation and maintenance needs, an appropriate width will be determined. Once the field review is complete, WYDOT will prepare and submit a set of plans reflecting the agreed upon easement locations and widths being requested, to the USFS for review. The set of plans will consist of an easement plat identifying the centerline location of the existing constructed highway with sub-meter GPS accuracy (or better). Periodic ties to monuments of record will be provided at approximately one mile intervals. WYDOT will provide the set of plans in an electronic digital format that is compatible with USFS GIS. USFS will notify WYDOT of its approval of the plans and WYDOT will send a request for LOC to FHWA. FHWA will review and forward the request to USFS. The approved LOC will be sent by USFS to FHWA. A letter will be prepared and sent to WYDOT with a copy of the LOC and any Stipulations. WYDOT will prepare the deed and forward to FHWA for execution. FHWA will send the deed back to WYDOT for recording. After recording, WYDOT will send copies to USFS and FHWA.

## VIII. CONSTRUCTION/RECONSTRUCTION

- A. WYDOT Resident Engineer and the USFS District Ranger will designate respective Construction Coordinators to provide coordination on matters related to the construction work or changed conditions that may alter the land allocations for approved plans. Changes in right-of-way requirements or conditions affecting the project NEPA decision that occur

during construction or reconstruction activities may necessitate additional NEPA analysis and coordination.

- B. WYDOT Resident Engineer will invite the USFS District Ranger and FHWA Operations Engineer (or their representatives) to attend a pre-work construction conference with the successful bidder.
- C. WYDOT Resident Engineer and the USFS Construction Coordinator will jointly participate in semi-final and final project inspections.
- D. WYDOT, when constructing the highway, will comply with the conditions and Stipulations set forth in the LOC. The USFS, acting as the Agent for the FHWA, will be responsible for the monitoring and enforcement of these conditions, including written notification, to the WYDOT Resident Engineer, of violations of these conditions and any subsequent action necessary to enforce compliance of the conditions. If necessary, USFS will request assistance from the FHWA Operations Engineer. If a Highway contractor is not complying with USFS conditions, USFS will give notice of noncompliance to the WYDOT Resident Engineer. If the noncompliance is not corrected within 30 days, FHWA upon notice from USFS, will secure compliance informally or, if necessary, take action pursuant to 23 CFR 1.36.
- E. All three agencies are encouraged to participate in annual coordination meetings and post-construction reviews at the local level. These discussions enhance relationships and promote improved communication, project planning & development, problem solving and learning from completed projects.

#### IX. OPERATION AND MAINTENANCE

- A. Maintenance is defined as minor restoration and upkeep to preserve the entire facility, including roadway, shoulders, slopes, drainage improvements, safety devices, and other features. Maintenance also includes snow removal, sanding, mowing, vegetation removal within the clear zone, culvert and ditch cleaning, and other services necessary for its safe and efficient operation. Maintenance does not include activities that change or enhance the operation of the existing facility from which it was originally designed.
- B. WYDOT will conduct maintenance activities to preserve scenic, environmental, and safety characteristics of transportation facilities to be compatible with adjacent NFS lands and resources.
- C. With respect to maintenance activities only, the term "right-of-way" is defined as the legal limits of the easement. If no formal easement exists, it is the area between the existing top of cuts and toe of fills or between the ROW fences.
- D. WYDOT Maintenance staff will notify the USFS District Ranger of any merchantable

timber which may be generated as the result of maintenance activities. The USFS will retain the right to this timber and determine whether a timber sale or other authorization for removal is appropriate.

- E. Routine maintenance activities within the right-of-way such as minor clearing, normal slough removal and ditch cleaning will not require coordination providing no waste material is deposited outside the ROW onto NFS lands.
- F. Non-routine maintenance activities within the right-of-way such as significant amounts of clearing, changes in established drainage patterns, and material sources and storage will be mutually agreed upon by the USFS District Ranger and WYDOT Maintenance by conference or other communication prior to commencing work.
- G. WYDOT Maintenance will coordinate with the USFS on any maintenance activities which may affect NFS lands outside the right-of-way.
- H. All maintenance activities, including snow removal and sanding, will be performed to minimize and control soil erosion and deposition with the right-of-way and adjacent lands.
- I. For use of biological or chemical control in clearing or vegetation maintenance on NFS lands, WYDOT will: follow the provisions contained in the highway easement deed if within a right-of-way covered by an easement; consult with the USFS District Ranger if within a right-of-way not covered by an easement; or obtain written approval if outside the limits of the right-of-way. The USFS may provide conditions protecting the adjacent NFS lands (National USFS/FHWA MOU, Part III. G.5.).
- J. WYDOT Maintenance may remove immediate hazards, such as rock slides or trees, without formal USFS approval and will notify the USFS District as soon as practicable. Removed material will be disposed of at locations mutually agreeable to WYDOT Maintenance and the USFS District Ranger.
- K. WYDOT Maintenance will notify the USFS District Ranger when facilities such as fences or cattleguards that are USFS responsibility are not being adequately maintained or will be impacted by WYDOT Maintenance within the right-of-way.
- L. USFS will notify WYDOT of planned USFS activities which may affect transportation operations or maintenance.
- M. WYDOT is encouraged to consult with the USFS when developing Operation & Maintenance Plans and Best Management Practices (BMPs) for application on highways within the national forests.
- N. WYDOT Maintenance is responsible for the removal and cleanup of all new releases and existing releases where a responsible party cannot be found or threatened releases of

hazardous substances originating on the highway right-of-way, including those that extend beyond the boundaries of the appropriated right-of-way to adjacent National Forest System lands and resources. In the event of threat or damage to adjacent National Forest System lands, the USFS will notify WYDOT of its concerns and, if necessary, request assistance from FHWA as provided in Section 111(J) of the National MOU between FHWA and the USFS.

- O. In the case of emergencies (floods, landslides, etc.), WYDOT Maintenance may conduct work outside the ROW to repair problem areas and will promptly notify the USFS District Ranger of actions taken or proposed.

## X. SIGNING

### A. General Provisions:

Actions defined in this Plan will be coordinated between personnel at an equivalent organizational level within each agency. Forest Supervisors-District Engineers and District Rangers-Resident Engineers or Maintenance Foreman are encouraged to confer and reach agreements on matters within their scope of responsibility. All requests for signs will be made to the District Engineer by the Forest Supervisor to maintain consistency within units. Unresolved problems and items requiring approval of higher authority will be referred to the State Transportation Director and Chief Engineer and the appropriate Regional Forester for consideration.

WYDOT will contact the USFS prior to the installation of road closure gates and Intelligent Transportation System (ITS) equipment (web cameras, weather stations, dynamic message signs, etc.) on roadways within the national forests. The USFS will assist WYDOT in selecting an equipment/component color consistent with forest Visual Resource management standards and objectives (contained in the FLRMP). Federal Standard color 30227 (light brown) was selected for use on road closure gates. The color will be applied to suitable components (tower and light pole, large electrical cabinets, elbow of swing arm, etc.). The swing arm must be galvanized and have reflective tape for enhanced visibility.

### B. Signing on State Highways:

1. USFS-related signing will be mutually reviewed and approved by the Forest Supervisor and the WYDOT District Traffic Engineer to assure compliance with this agreement and with all State and Federal Transportation Safety Standards. Planning and approval of USFS signs on the State Highways will be coordinated between the Forest Supervisor and the WYDOT District Engineer.
2. The USFS-related signing that is the responsibility of the State shall meet all the

State Signing Specifications, which include the standard signing supports and sign materials. Signs which are the responsibility of the USFS shall meet USFS Standards and Specifications.

3. All signs installed within the right-of-way shall meet MUTCD and AASHTO Roadside Design Guide Criteria for Roadside Safety.
4. All outdoor advertising on private lands within the Forest Boundary are subject to the rules and regulations of the Wyoming Department of Transportation.
5. For the purpose of this agreement, "Direct Access" is defined as a roadway which leads motorists to their destination without having to divert onto another roadway before reaching that destination.
6. The FHWA Manual on Uniform Traffic Control Devices is referred to as the MUTCD in this MOU.
7. Signs which are not specifically addressed in this MOU (e.g., interpretive waysides, scenic overlooks) and installed within the right-of-way, shall be mutually agreed upon by WYDOT and the USFS.
8. Sign plan inventories shall be developed to aid in State WYDOT and USFS efforts in managing signage along roads. Regulatory and warning signs maintain precedence over directional, TOD and special use signs.
9. The USFS Level 3 Maintenance Standard is assigned to a road where management direction requires the road to be open and maintained for safe travel by a prudent driver in a passenger car. Traffic volumes are minor to moderate; however, user comfort and convenience are not a consideration. Roads at this maintenance level are normally characterized as low speed, single lane with turnouts.
10. Incident Management including prescribed fire. The FS may provide and install temporary emergency signing and traffic control devices in accordance to Incident Management requirement of the MUTCD.

C. Signing on Interstate Highways

1. On Interstate Highways within Forest Boundaries:
  - a. The State will erect and maintain standard MUTCD signs:
    - 1) Identifying Entering and Leaving National Forest Lands. Signs will only be placed at exterior boundaries, unless significant interior highway length is within private land.
    - 2) For significant designated recreation areas, as shown on Forest Visitor Maps, where an intersecting road at an Interchange provides direct access to the area.
    - 3) For numbered National Forest System Roads (maintained to a USFS Level 3 maintenance standard or higher) which are directly accessed from an Interstate Highway Interchange and as recommended by the USFS.
  - b. The USFS will not erect any signs within an Interstate Highway right-of-way.
  - c. No Signs will be allowed for special use facilities, other than General Service Signing provided by law or policy.
2. On Interstate Highways outside of Forest Boundaries:
  - a. The State will erect and maintain standard MUTCD signs:

- 1) For National Forests or significant designated recreation areas which are directly accessed by an intersecting Highway from an Interchange and are within 50 miles of the Interstate Highway.
  - 2) For numbered National Forest System Roads (maintained to a USFS Level 3 Maintenance standard or higher) which are directly accessed from an Interstate Highway Interchange and as recommended by the USFS.
- b. The USFS will not erect any signs within an Interstate Highway right-of-way.
- c. No signs will be allowed for special use facilities other than the Motorist Service Signing provided by State law or policy.

D. Signing on Primary and Secondary Highways

1. On Primary and Secondary Highways within Forest Boundaries:

a. The State will erect and maintain standard MUTCD signs:

- 1) Identifying entering and leaving National Forest Lands. Signs will only be placed at exterior boundaries, unless significant interior highway lengths are within private lands. If the USFS desires to sign the boundaries with other than the standard State sign, such as with the USFS Standard shaped signs, they may do so at Forest Service expense.
- 2) For numbered National Forest System Roads (maintained to a USFS Level 3 maintenance standard or higher) which directly access these highways and as recommended by the USFS.
- 3) For designated recreation areas, as shown on Forest Visitor Maps, at their direct access point with the highway. If the USFS requests recreation LOGOS on the signs, they will be added at USFS expense for fabrication, erection and maintenance. The USFS may erect and maintain at its expense, through contract or force account, signs for individual developed sites, such as approach and entrance signs.
- 4) For on-forest administrative sites or other facilities providing information for Forest users.
- 5) For significant topographic features within the Forest, as coordinated with the USFS, i.e., mountain passes, Continental Divide, rivers, etc.. All other topographic features may be signed by the USFS at its expense.

b. WYDOT will erect and maintain significant historical site signs as determined by WYDOT and the USFS.

c. The USFS will be responsible for:

- 1) Erecting and maintaining all signs needed for Forest Management except those noted in 1-5 above. These signs will be coordinated with the State for compliance with the Highway Safety Act and as agreement on location and standard.

- 2) Special Use permittee signing on the Highway right-of-way. Signs shall be in conformance with the Federal and State Outdoor Advertising laws.
2. On Primary and Secondary Highways outside Forest Boundaries.
    - b. The State will erect and maintain standard MUTCD signs:
      - 1) For numbered National Forest System Roads (maintained to USFS Level 3 Maintenance Standard or higher), which directly access these highways, and as recommended by the USFS.
      - 2) For designated recreation areas or National Forests, which are directly accessed and are within 20 miles of the highway. If the USFS requests recreation LOGOS on the signs, they will be added at USFS expense for fabrication, erection and maintenance.
    - c. No signs will be allowed for special use facilities, other than the Motorist Service signing provided by State law or policy.
    - d. Fabrication, erection and maintenance of signing for Administrative Sites (Offices) will be allowed, at USFS expense, at locations and to standards agreed to by the State and/or other parties having official jurisdiction, such as municipalities.
- E. Tourist-Oriented Directional Signs (TODS)  
WYDOT will coordinate and consult with the USFS District Ranger regarding any third party brokered TODS-type signs. Approval by the USFS is required prior to WYDOT approving and/or installing TODS signs in the highway ROW on any NFS lands.

## XI. ACCESS CONTROL

- A. Access to interstate highways will be only by established interchanges, except for emergency use in accordance with the rules and regulations governing the Interstate Highway System.
- B. USFS, or its permit holders will obtain a State Highway Access Permit from the WYDOT District for any new or revised road approaches to State highways. New approaches will be at the expense of USFS or its permit holders. Maintenance of road approaches will be the responsibility of the permittee unless specifically addressed in the permit. If development on private land necessitates a revised approach, the joint NEPA efforts identified in this MOU may not apply.
- C. USFS may construct temporary approaches as necessary during fire fighting or other emergencies without formal WYDOT approval. USFS will notify the WYDOT District as soon as practicable. Following emergency use, necessary obliteration and restoration measures will be made at no expense to WYDOT. The USFS will take precaution during such emergencies to safeguard highway users.
- D. In fire fighting situations, as necessary without formal WYDOT approval, the USFS may

provide and install temporary emergency signing and traffic control devices in accordance with Incident Management requirements of Part VI of the MUTCD.

**XII. THIRD PARTY OCCUPANCY**

- A. The consent to a highway easement deed on behalf of WYDOT by the USFS does not include any rights for non-highway purposes, facilities or occupancy by third parties. WYDOT and USFS will consult before any third party occupancy permits or other encumbrances are acted upon by either party, to determine if such occupancy may impact highway safety, maintenance and efficiency.
  
- B. The USFS will request WYDOT review and concurrence prior to approving and permitting third party occupancy. In the event the USFS and WYDOT concur in granting permission to a utility to locate a facility within the ROW, placement will be in accordance with the WYDOT Utility Accommodation Regulation.